

Service Date: July 26, 1994

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER Of the Request by)	UTILITY DIVISION
U S West Communications to)	
Offer Frame Relay Service on a)	DOCKET NO. N-94-44
Deregulated Basis.)	ORDER NO. 5796

FINAL ORDER

Background

1. On May 23, 1994, U S West Communications, Inc.. (USWC) filed a request to offer Frame Relay Service (FRS) on a deregulated basis with the Montana Public Service Commission (Commission) pursuant to ARM 38.5.2705 et seq. The application was served on the Commission's telecommunications service list.

DISCUSSION

2. FRS is a high-speed data communications service that provides the transmission of data between Local Area Networks and host computers. Data is divided into frame format by customer premises equipment, then forwarded to USWC's Frame Relay equipment via dedicated facilities, and subsequently forwarded over the "Permanent Virtual Connection" configuration to a customer's chosen destination.

3. The Commission has previously considered the regulatory status of a similar service, Transparent LAN, in 1992, and after a formal hearing issued an order finding it to be deregulated under Montana law (see Order No. 5651 of Docket No. 92.6.40).

4. The decision in Order No. 5651 was based on the Montana Telecommunications Act which defines "regulated telecommunications services" to be "two-way switched, voice grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport". (See § 69-3-803(3), MCA)

5. FRS, like Transparent LAN service is intended for use as a data transmission service, not a voice communications service. It is on this basis that the Commission will approve the deregulation of FRS. If FRS is used for the transmission of voice communication, it will be subject to regulation by this Commission.

CONCLUSIONS OF LAW

1. USWC is a public utility offering regulated telecommunications services in Montana and is subject to the regulatory jurisdiction of the Montana Public Service Commission. §§69-3-101 and 69-3-803, MCA.

2. The Montana Public Service Commission has primary jurisdiction to determine if a telecommunications service is subject to regulation under the Montana Telecommunications Act. §§69-3-801 et seq., MCA, and ARM 38.5.2707.

3. The Commission has provided adequate public notice and an opportunity to be heard herein, pursuant to the Montana Administrative Procedures Act. Title 2, Chapter 4, MCA.

4. "Regulated Telecommunications Services" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. §69-3-803(3), MCA. The Commission grants its approval to USWC to offer Frame Relay Service on a deregulated basis for the purpose of data transmission. If the service is used for voice communications, it will be subject to regulation.

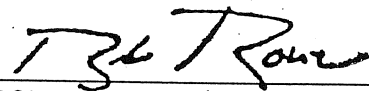
DECISION

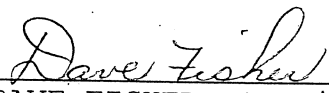
On July 18, 1994, at a duly noticed Business Meeting, the Commission APPROVED USWC's request to offer Frame Relay Service on a deregulated basis.

Done and Dated this 18th day of July, 1994 by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


BOB ANDERSON, Chairman



BOB ROWE, Vice Chairman
(Voting to Dissent, Opinion Attached)


DAVE FISHER, Commissioner


NANCY MCCAFFREE, Commissioner


DANNY OBERG, Commissioner

ATTEST:


Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

DISSENT OF COMMISSIONER ROWE

Ratepayers for regulated service have paid \$1.533 million for installation of an unregulated service which they will not use. Worse, because the service is unregulated, US WEST will receive the benefit of any net revenue the service generates, rather than the ratepayers who paid for it. Customers should receive a \$1.533 million credit for their contribution to frame relay.

I support introduction of frame relay service. It will be a valuable tool for large transmitters of data, including the State of Montana, large commercial banks, and other large businesses or institutions which transmit significant amounts of data between locations. My objection concerns the way it was paid for.

Frame relay service was one small part of the regulatory shell game "Teletech." In exchange for being allowed to keep the entire enormous net gain from the sale, US WEST committed to spend about \$28 million to install some significant improvements to their network.¹ \$1.533 of that amount was for Frame Relay Service.

This is the first small piece of Teletech to come before the Commission for approval. It demonstrates the flaw in the Teletech bargain:

1. Ratepayers will be requested to pay depreciation and interest on "regulated" elements of Teletech, even though ratepayers effectively put up the money.

¹In the sale of exchanges, US WEST wanted to have it both ways when it came to whether the money to fund Teletech did or did not come from the ratepayers.

2. Ratepayers will be denied the benefit of any net revenue earned on unregulated services such as frame relay, which would otherwise go to offset the revenue requirement.

Either way, regulated customers come up short. In this instance a better approach would have been to approve frame relay on an unregulated basis, conditioned upon a \$1.533 million credit to the customers.

The frame relay filing also points out a key flaw in the Montana Telecommunications Act. "Regulated services" are primarily confined to those necessary for voice transmission. Section 69-3-803(3), M.C.A. Exclusively data transmission is not regulated. Both customers and providers should be concerned with this antiquated definition:

1. Data-related services are increasingly essential, "affected with the public interest," and therefore appropriate candidates for some form of regulatory oversight.
2. Many customer complaints and utility proposals to the Commission now concern data.
3. The distinction between voice and data grade is increasingly difficult to maintain.
4. The voice/data distinction makes it difficult to plan integrated telecommunications systems.
5. Some "public purpose" users such as schools and health providers are considering legislation to allow lower

rates for data services. It is unclear the Commission would have the subject matter jurisdiction over data, even if it were granted authority to lower the rate. For all of these reasons, interested parties should work to modernize the definition of regulated telecommunications. In the meantime relatively small customers of regulated services will have subsidized the demands of larger users of unregulated services, including the State of Montana².

RESPECTFULLY SUBMITTED this 18th day of July, 1994



BOB ROWE
Vice Chair

² It is appropriate that the State be a frame relay customer. At the time frame relay service was proposed as part of Teletech, the State had not yet been identified as a prospective customer. Frame relay provides an ideal vehicle for the State's new SUMMITNET program. This program may provide a valuable enhancement to Montana's telecommunications infrastructure.